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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,888	12/15/2003	Steven Clay Moore		1017

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EXAMINER

WRIGHT, ANDREW D

ART UNIT PAPER NUMBER

3617

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/734,888

Applicant(s)

MOORE, STEVEN CLAY

Examiner

Andrew Wright

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the manual adjustment (claims 4 and 13), the sides enabling it to hold scooped up water (claims 6 and 15), and the 180° displacement in one plane and 30° displacement in a perpendicular plane (claims 9 and 10) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claims 1 and 2 are objected to because of the following informalities.

Appropriate correction is required.

3. Claim 1 recites "the one or more wake control plates" in line 1. The word "the" should be deleted from this phrase. A positive recitation will be assumed for examination. Claim 8 has similar language and is objected to for the same reason.

4. Claim 1 recites the limitation "the watercraft" in line 2. There is insufficient antecedent basis for this limitation in the claim. The word "the" should be replaced with the word "a" in this phrase. A positive recitation will be assumed for examination. Claim 8 has similar language and is objected to for the same reason.

5. Claim 1 recites the limitation "the transom" in line 3. There is insufficient antecedent basis for this limitation in the claim. A transom is not an inherent part of a watercraft. Suggested wording: "a transom of the watercraft". A positive recitation will be assumed for examination.

6. Claim 2 recites the limitation "the desired position" in line 4. There is insufficient antecedent basis for this limitation in the claim. The word "the" should be replaced with the word "a" in this phrase. A positive recitation will be assumed for examination. Claim 11 has similar language and is objected to for the same reason.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. Claim 1 recites "the traditional trim tab position" in line 5. This is indefinite because it is unclear to the reader what the traditional position is. Claims 2-7 depend from claim 1 and are rejected for the same reason. It will be assumed for examination that the traditional trim tab position is with the leading edge of the plate even with the bottom of the transom.

10. Claim 8 recites "one or more wake control plates: ... can be controlled independently or dependently from the other one or more wake control plates". No other one or more wake control plates have been recited. This renders the claim indefinite. Claims 9-16 depend from claim 8 and are rejected for the same reason. It will be assumed for examination that the intent of the recitation is that there are plural plates, and that the position of each plate can be controlled independently of that of the other plates.

11. Claim 9 recites "the wake control plate" in line 2. It is unclear if this refers to the "one or more ... plates" or the "other one or more ... plates". This renders the claim indefinite. Claim 10 has similar language.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1-3, 6-12, 15, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Bue (US 3,391,667). Regarding claim 1, Bue shows a trim tab mechanism for a boat. The mechanism comprises two wake control plates (4). Each plate is attached to the stern by rod (16) and housing (7). The rod (16) is the length adjustable rod. Each plate (4) is of a specific size, namely that shown in the figures. Each plate can be positioned in the water by the rod (16) (see figure 2; see also column 2 lines 52-60, and column 3 lines 8-15). Each plate can have its front edge positioned below the transom. The plate will necessarily scoop water in this position. Each plate is flat.
14. Regarding claim 2, Bue shows that the rod (16) is attached to the stern via bracket (15) and to the plate directly. The path from the rod and plate connection, to the rod and bracket connection, to the bracket and stern connection is not a straight line. The rod can hold the plate in a desired position.
15. Claim 3, the rod is adjusted by electric motor, which is encompassed by “another power assistance”.
16. Claim 6, each plate has side walls (5). The walls are capable of at least temporarily holding water on the plate.
17. Claim 7, Bue teaches that the plates are incorporated as a steering device (column 3, lines 20-27). This is encompassed by the recited “other function”.

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18. Regarding claim 8, Bue shows a trim tab mechanism for a boat. The mechanism comprises two wake control plates (4). Each plate is attached to the stern by rod (16) and housing (7). The rod (16) is the length adjustable rod. The housing (7) is the one or more connection. Each plate (4) is of any shape and size, namely that shown in the figures. Each plate can be positioned in the water by the rod (16) (see figure 2; see also column 2 lines 52-60, and column 3 lines 8-15). Each plate can have its front edge positioned under the stern. When the boat is riding bow-high the plates will be fully submersed. Each plate can be controlled independently of the other (column 3, lines 20-27).

19. Regarding claim 9, Bue shows that the rod (16) is attached to the stern via bracket (15). Rod (16) is attached to the bracket via universal joint (20). The universal joint is capable of allowing the recited range of motion for the rod.

20. Regarding claim 10, Bue shows that the rod (16) is attached to the plate via rubber ball slip joint (22). The rubber ball slip joint is capable of allowing the recited range of motion for the rod. The universal joint (20) constitutes the recited rotating joint.

21. Claim 11, the rod (16) connects to the stern of the boat via bracket (15). The rod connects to the plate. The rod controls the position of the plate and can hold the plate in a desired position.

22. Claim 12, the rod is adjusted by electric motor, which is encompassed by "another power assistance".

23. Claim 15, each plate has side walls (5). The walls are capable of at least temporarily holding water on the plate.

24. Claim 16, Bue teaches that the plates are incorporated as a steering device (column 3, lines 20-27). This is encompassed by the recited "other function".

Claim Rejections - 35 USC § 103

25. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

26. Claims 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bue (US 3,391,667) in view of Banner (US 3,760,758). Bue discloses an electric motor (14) that powers the jack screw rod (16). Bue does not show that the rod is adjusted manually. Banner shows a trim tab with its position controlled by a manually operated linkage. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Bue by replacing the electric motor with a manual adjustment. The motivation would be to eliminate the weight of the electric drive, and to eliminate reliance upon electric power to operate the trim tabs.

27. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bue (US 3,391,667) in view of Gaudin (US 4,261,278). Bue discloses a flat plate with side walls. Bue does not disclose that the plate is curved. Gaudin shows a trim tab system with flat plates with curved trailing edges. It is well known and common to experiment with the size and shape of surfaces that contact the water for the purpose of optimizing hydrodynamic performance. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Bue by

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adding a curve to the trailing edge of the plates. The motivation would be to optimize hydrodynamic performance of the boat.

Conclusion

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. O'Donnell ('682) shows a trim tab that can be positioned with its leading edge lower than the transom to scoop water upward. Finkl ('951) shows a trim tab that can be positioned with its leading edge lower than the transom to scoop water upward. Cluett ('259) shows a trim tab with side walls. Bennet ('643) shows a trim tab with ball-and-socket joint connections. Thomas ('622), Davis ('432), Pigeon ('071), Remnant ('835), Jessen ('099), and Seipel ('572) were listed by applicant in the specification and are listed on the PTO-892 as being considered by the examiner.

29. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Assistant Commissioner for Patents
Washington, D.C. 20231

on _____.
(Date)

Typed or printed name of person signing this certificate:

Signature: _____

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I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (703) _____ - _____ on _____.
(Date)

Typed or printed name of person signing this certificate:

Signature: _____

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

30. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon

skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

31. If applicant chooses to continue prosecution alone, a proper response to an Office Action should include:

- (a) Acknowledgement of objections to the drawing and corrections as described above, and
- (b) Instruction to cancel or amend the rejected claims, or to substitute or add claims to be considered by this Office (all amendments must comply with 37 CFR 1.121 (available at the www.uspto.gov website)), or
- (c) An argument under the heading "Remarks" in which Applicant points out wherein he may disagree with Examiner's contentions and wherein he also discusses the references applied against his claims, explaining how his claims avoid these references or distinguish from them in a patentable sense.

32. Any inquiry concerning this communication should be directed to examiner Andrew D. Wright at telephone number (703) 308-6841. The examiner can normally be reached Monday-Friday from 9:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano, can be reached at (703) 308-0230. The fax number for official communications is 703-872-9306. The fax number directly to the examiner for unofficial communications is 703-746-3548.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrew D. Wright
Patent Examiner
Art Unit 3617

Ar 7/27/04
ANDREW D. WRIGHT
PRIMARY EXAMINER